

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant was an employee of Leavcon II, working on the construction of the Kansas Speedway. Periodically, Leavcon II would lend claimant to respondent K. C. Heritage Construction Company when Leavcon II did not have enough work to keep claimant busy. On June 6, 2001, claimant was lent to K. C. Heritage Construction Company to help with the general clean up of the speedway. On that date, claimant was involved with dumping trash and sweeping. While riding on an elevator, claimant began experiencing pain in his chest and left upper extremity. He advised Alvin Gainer, the elevator operator, of the chest pain. Alvin called Tony Baranowski, the project safety manager for Kansas Speedway, and an ambulance was called. At first, they were concerned that claimant was suffering a heart attack. Claimant was transferred by ambulance to Providence Medical Center, where he underwent a series of tests. It was determined claimant was not suffering from a heart attack or experiencing any heart complications.

Claimant was then referred to his family doctor, Jon M. Seibert, M.D., with Atchison Family Medicine in Atchison, Kansas. Dr. Seibert again checked claimant for heart complications. Finding none, he began testing claimant for other problems. Ultimately, it was determined that claimant had left carpal tunnel syndrome.

Claimant testified that, on February 8, two days after the accidental injury, he contacted Mr. Baranowski after being instructed to do so by Linda Blasky, the Leavcon II office manager. Claimant was told to come to the race track and fill out papers. Claimant testified he proceeded to the track and ultimately ended up at the office trailer of Turner Construction, another subcontractor at the track. There he contacted a woman he knew as "LJ", later identified as Lorinda Johannsen, an administrative assistant and receptionist for Turner Construction. Claimant filled out two pages of papers regarding the February 6 accident, discussing the chest pains he had experienced on February 6.

The first indication that claimant may have suffered an injury to a part of his body other than his heart was contained in the office notes from the February 12, 2001, office visit with Dr. Seibert. In the office notes from that visit, claimant discussed with Dr. Seibert the fact that he had very similar pain in his chest a few years before, only at that time the pain went down his right arm. It was ultimately determined that claimant had cubital tunnel syndrome, which resulted in surgery on his right elbow which resolved the chest pain. Additional tests were run on claimant and it was determined that he had carpal tunnel syndrome in his left upper extremity. This time the test for cubital tunnel syndrome came back negative or normal.

In describing the relationship of the various parties, claimant identified the Kansas Speedway as the construction project. Turner Construction was the general contractor on the job, with both Leavcon II and K. C. Heritage Construction Company being subcontractors. Mr. Baranowski was described as the safety director for the entire project. Claimant testified, and Mr. Baranowski agreed, that every employee hired to work at the

Kansas Speedway was required to go through a safety orientation. Mr. Baranowski was in charge of that safety orientation.

Claimant ultimately came under the care of John B. Moore, IV, M.D., a plastic, reconstructive and hand surgery specialist. Dr. Moore identified claimant's problems as left carpal tunnel syndrome, which he noted in his April 20, 2001, report was aggravated by claimant's work activities. The history provided to Dr. Moore indicated that claimant was dumping a trash can when he felt a sudden pain in his left chest, neck, shoulders and arm with radiculopathy into his hand, including numbness of the entire left hand. This history is not identical to that provided at the emergency room on the date of the accident. Claimant advised the emergency room at that time he was experiencing chest pains. The first indication of pain in claimant's left upper extremity is contained in the February 7, 2001, office notes of Dr. Seibert.

In workers compensation litigation, it is claimant's burden to prove his entitlement to the benefits requested by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g).

Respondent objects to the Order of the Administrative Law Judge, alleging the Administrative Law Judge failed to make specific findings with regard to the particular issues in contention. At the preliminary hearing, respondent's defenses included whether claimant suffered accidental injury arising out of and in the course of his employment and whether appropriate and timely notice was provided. In order to grant benefits, the Administrative Law Judge would be required to find in claimant's favor on those issues. Therefore, while the Administrative Law Judge did not specifically state in the Order his findings with regard to those issues, his ruling is interpreted as a finding in claimant's favor.

With regard to whether appropriate notice was given, K.S.A. 44-520 states that:

... proceedings for compensation under the workers compensation act shall not be maintained unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary.

K.S.A. 44-520 requires notice of accident, not notice of injury. Howell v. Sunshine Biscuits, Inc., WCAB Docket Nos. 222,949 and 222,950 (October 1997).

In this instance, the occurrence was well-known to respondent and to the employees of the other contractors at the Kansas Speedway, as an ambulance was called and claimant was transferred to a hospital. It is acknowledged that, at first, it was thought

claimant was suffering a heart attack. Nevertheless, the pain complaints in claimant's chest did originate as a result of claimant's work at the speedway.

The Appeals Board finds that respondent had actual knowledge of claimant's accident sufficient to satisfy the requirements of K.S.A. 44-520.

Respondent further contends claimant did not prove that he suffered accidental injury arising out of and in the course of his employment. Respondent's objection goes to the fact that claimant is currently requesting surgery to resolve his carpal tunnel problems. On the date of accident, February 6, 2001, claimant's problems appeared to center in his chest and upper extremity. The Board finds that claimant's carpal tunnel problems are related to the injury of February 6, 2001, for two reasons. First, the office notes of February 12, 2001, with Dr. Seibert show a pattern or history of these types of referred pains resulting in treatment to claimant's upper extremities. Several years before, claimant had similar pains in his chest which were resolved through cubital tunnel surgery on his right arm. Additionally, the medical opinion of Dr. Moore verifies that claimant's carpal tunnel syndrome was aggravated by his work activities.

The Appeals Board, therefore, finds that claimant has proven that he suffered accidental injury arising out of and in the course of his employment with respondent on February 6, 2001, and that the resulting need for carpal tunnel surgery to his left upper extremity is related to that injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated May 17, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2001.

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Gary R. Terrill, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director